

STATE OF DELAWARE  
DEPARTMENT OF FINANCE  
DIVISION OF REVENUE  
601 DELAWARE AVENUE  
WILMINGTON, DELAWARE 19899

TAX NEWSGRAM 74-2

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PERSONAL INCOME TAX

- Capital Gains & Losses - Disallowance of Long-Term Capital Gain Deduction Pursuant to Section 1106 (a) (2), 30 Delaware Code.

Questions have been raised concerning the proper method of computing the modification required by the amendment to Section 1106 (a) (2), relating to the disallowance of the long-term capital gain deduction.

Section 1106 (a) (2), Title 30, Delaware Code, was amended by the 127th General Assembly to read as follows:

"Section 1106. (a) Additions. There shall be added to Federal Adjusted Gross Income:

(2) The amount of any long-term capital gains deduction allowable under the laws of the United States attributable to long-term capital gains realized before January 1, 1972, or after the effective date of this Act."

The Amendment became effective on July 7, 1973.

In determining Delaware taxable income, the amendment disallows the 50% long-term capital gain deduction allowable under Federal Law to the extent such deduction is attributable to long-term capital gains realized after July 6, 1973.

Effective January 1, 1971, the Delaware Law provided that the computation of Delaware taxable income would start with Federal Adjusted Gross Income, and capital gains and losses were treated in the same manner as on the Federal return (except that capital loss carryovers for years prior to January 1, 1971, were not allowable).

Accordingly, short-term and long-term capital gains will continue to be offset against short-term and long-term losses in the same manner as provided under Federal Law, and it is only in those instances where this results in the allowance of a long-term capital gain deduction on the Federal return (under Section 1202, Internal Revenue Code) that an adjustment may be required on the Delaware return. (Under Federal Law the allowable

deduction is 50% of the amount by which the net long-term capital gain exceeds the net short-term capital loss).

For full calendar years (1974 and subsequent years) the application of the law and computation of the required modification seems clear. For example, assume that in calendar year 1974 a taxpayer realizes long-term capital gains (spread throughout the year) totalling \$8,000, and also realizes long-term capital losses (throughout the year) totalling \$5,000, resulting in a net long-term gain of \$3,000 for the year. On his Federal return the taxpayer is allowed a deduction of 50% of the net long-term gain, or \$1,500. On his Delaware return the entire \$1,500 deduction is disallowed and must be added back to Federal Adjusted Gross Income in computing Delaware taxable income.

However, with respect to calendar year 1973, the amendment became effective on July 7, 1973, and requires that there be disallowed and added back to Federal Adjusted Gross Income that portion of the long-term capital gain deduction allowed under Federal Law which is attributable to gains realized after July 6, 1973.

The application of the law to 1973 is interpreted as follows:

- (a) As indicated above, the Delaware Law is only applicable in the event that the taxpayer has a long-term capital gain deduction on the Federal return (under Section 1202, the Internal Revenue Code). If a long-term capital gain deduction in fact does not exist on the Federal return the 1973 Delaware amendment is not applicable.
- (b) If there is a long-term capital gain deduction on the Federal return, this must be added back to the Federal Adjusted Gross Income to arrive at Delaware taxable income to the extent that the net long-term capital gain deduction occurred after July 6, 1973. But in no event will the taxpayer be required to add back to his Federal Adjusted Gross Income more than the long-term capital gain deduction computed on Schedule D of the Federal return.

The application of the law may be illustrated by the following examples:

- (1) Assume a taxpayer realizes a long-term capital

gain of \$1,000 in March, 1973, and a long-term capital gain of \$800 in September, 1973. On his Federal return, the taxpayer is allowed a deduction of 50% of the net long-term gain of \$1,800 for the year, or \$900. On his Delaware return \$400 of the deduction would be disallowed and added back in computing Delaware taxable income, which represents the amount of the deduction attributable to the \$800 gain realized after July 6, 1973.

(2) Assume a taxpayer realizes a long-term gain of \$1,000 in March, 1973, and a long-term loss of \$600 in September, 1973. On his Federal return, the net long-term gain would be \$400 and he would be entitled to a deduction of 50% thereof, or \$200. Since the deduction is attributable to gain realized before July 7, 1973, no adjustment would be required on his Delaware return.

(3) Assume a taxpayer realizes a long-term capital loss of \$800 in April, 1973, and a long-term capital gain of \$1,000 in September, 1973. The net gain is \$200 and on his Federal return the taxpayer would be entitled to a deduction of 50% of the net gain, or \$100. On his Delaware return the \$100 would be disallowed since the gain occurred after July 7, 1973, and is limited to the amount allowed on the Federal return.

(4) Assume a taxpayer realizes a long-term capital loss of \$4,000 in March, 1973, and a long-term capital gain of \$2,500 in October, 1973. Since there is no long-term capital gain deduction allowable on the Federal return, no adjustment is required on the Delaware return.

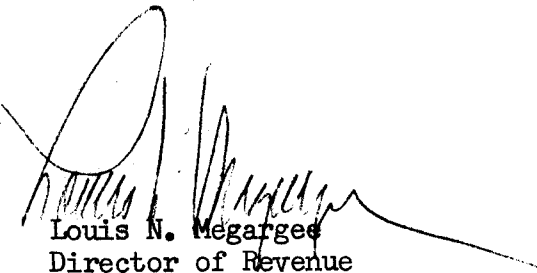
(5) Assume a taxpayer realizes \$800 long-term capital gain and \$600 long-term capital loss prior to July 7, 1973, and \$1,000 long-term capital gain and \$400 long-term loss after July 6, 1973. The net gain is \$800 and on his Federal return the taxpayer would

be entitled to a 50% deduction or \$400. On his Delaware return, that portion of the \$400 deduction which is attributable to the net gain of \$600 realized after July 7, 1973, or \$300, is disallowed and added back to Federal Adjusted Gross Income on the Delaware return.

Capital loss carryovers (long-term or short-term) are not affected by this amendment and are allowable in the same manner as on the Federal return, except that capital losses are not permitted to be carried over from taxable years ending prior to January 1, 1971. As under the Federal rule, it requires \$2,000 of long-term capital loss to offset \$1,000 of ordinary income.

It has come to our attention that there are some technical defects in the Schedule 200GL, attached to Form 200, which may produce incorrect results in certain situations. In view of the interpretations set forth herein, it is believed that in nearly all cases the taxpayer will be able to determine the adjustment required, if any, on his Delaware return Form 200 (Line 32) on the basis of information contained in Schedule D of his Federal Form 1040. Accordingly, it is concluded that taxpayers need only attach a copy of their Schedule D, Form 1040 to their Delaware return to support the adjustment and need not file Schedule 200GL.

With respect to any returns already filed, the Division will examine all Schedules 200GL submitted and make any necessary adjustments. Any taxpayer having questions about the application of the law to his particular case may call 571-3360.



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